

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

**AMERICAN SOUTHERN
INSURANCE COMPANY, a
Kansas Corporation,**

Plaintiff,

V.

Case No.: _____

**CREATIVE SCAPES, LLC, an
Alabama Limited Liability
Company and RICHARD
MARANVILLE, an individual,**

Defendants.

COMPLAINT

Plaintiff, American Southern Insurance Company (hereinafter “American Southern” or “Plaintiff”) files this Complaint against the Defendants Creative Scapes, LLC (“Creative Scapes”) and Richard Maranville as follows:

PARTIES

1. Plaintiff, American Southern Insurance Company, is a corporation organized and existing pursuant to the laws of the State of Kansas, and having its principal place of business in Atlanta, Georgia. At all times relevant hereto, American Southern was authorized to do business in the State of Alabama.

2. Defendant Creative Scapes is a limited liability company organized and existing under the laws of the State of Alabama. Defendant Richard Maranville is the sole member, manager and organizer of Creative Scapes.

3. Defendant Richard Maranville is an adult resident citizen of Madison County, Alabama.

JURISDICTION AND VENUE

4. Diversity jurisdiction exists in this case pursuant to 28 U.S.C. § 1332(a)(1) in that there is complete diversity of citizenship between the Plaintiff and all of the Defendants and the amount in controversy in this action exceeds \$75,000 exclusive of interest and costs.

5. Venue is proper in the Northern District of Alabama as the Defendants maintain their principal place of business and residency in Madison County, Alabama and the facts giving rise to the claims asserted herein occurred in Alabama.

FACTS

6. On or about December 11, 2015, the Defendant, Creative Scapes, entered into a Subcontract with Denark Construction, Inc. to perform rough carpentry and general trades work on a project known as the Grissom High School Project in Madison County, Alabama (the "Project"). The subcontract sum was in the amount of \$372,600.00. Denark Construction, Inc., was the general contractor under contract with the Huntsville City Board of Education.

7. On February 29, 2016, the Plaintiff, American Southern, issued a Subcontract Performance Bond in the amount of \$372,600.00 on the Project, being Bond No. 64355 (attached hereto and incorporated herein as Exhibit “1”). Said Performance Bond named Creative Scapes as Principal, American Southern as Surety, and Denark as obligee.

8. The condition of the subcontract Performance Bond on the project was, inter alia, “ ... that if the above bounden Principal shall well and truly perform all of the undertakings, covenants, terms, conditions, and agreements of said Subcontract within the time provided therein and any extensions thereof that may be granted by the obligee, and during the life of any guaranty required under said Subcontract, and shall also well and truly perform all of the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said Subcontract that may hereafter be made, and shall indemnify and save harmless said obligee of and from any and all loss, damage, and expense, including costs and attorney’s fees, which the said obligee may sustain by reason of failure to do so, then this obligation shall be null and void; otherwise it shall remain in full force and effect.”

9. In approximately July of 2017, Creative Scapes failed to timely perform its contractual obligations on the Project.

10. On or about August 2, 2017, Denark declared Creative Scapes in default under the subcontract.

11. Denark called upon American Southern to fulfill Creative Scapes's contractual obligations and see to the full performance of the Creative Scapes's Subcontract.

12. American Southern has now paid Denark a total of \$300,000.00 to complete the work under the Creative Scapes's Subcontract in full satisfaction of its Performance Bond obligations.

13. To date, American Southern has paid attorney's fees, costs and expenses in the amount of \$9,804.70 and construction consultant fees and expenses in the amount of \$9,653.72 all in connection with the Performance Bond claim asserted by Denark.

14. In addition, American Southern has incurred and will continue to incur costs, expenses and attorney's fees in and about the prosecution of this action.

COUNT ONE
CLAIM FOR COMMON LAW INDEMNITY

15. American Southern reaffirms and incorporates all previous allegations of its Complaint.

16. The Plaintiff, American Southern, as Surety, having paid for completion of the construction pursuant to its Performance Bond obligations is entitled, under the common law of the State of Alabama, to full and complete indemnity from its principal, Creative Scapes.

WHEREFORE, the Plaintiff, American Southern, demands judgment against the Defendant, Creative Scapes, for \$319,458.42, plus interest, costs, and attorney's fees.

COUNT TWO
CLAIM FOR STATUTORY INDEMNITY

17. American Southern reaffirms and incorporates all previous allegations of its Complaint.

18. The Surety, American Southern, having paid the debt of its principal, Creative Scapes, is entitled to be substituted for the creditor, Denark, and is subrogated to all rights and remedies against Creative Scapes pursuant to Alabama Code § 8-3-2 and § 8-3-5.

WHEREFORE, the Plaintiff, American Southern, demands judgment against the Defendant, Creative Scapes, for \$319,458.42, plus interest, costs, and attorney's fees.

COUNT THREE
CLAIM FOR CONTRACTUAL INDEMNITY

19. American Southern reaffirms and incorporates all previous allegations of its Complaint.

20. On or about the February 26, 2016, the Defendants executed a General Agreement of Indemnity in favor of the Surety, American Southern. The Defendant, Richard Maranville, executed said written indemnity agreement in his individual capacity and as the Managing Member of Creative Scapes. A copy of said indemnity agreement is attached hereto as Exhibit "2".

21. Said General Agreement of Indemnity provides that the principal, Creative Scapes and Richard Maranville, individually, shall:

" ... Indemnify and save harmless Surety from and against any and all liability, loss, costs, damages or expenses of whatever nature or kind and arising out of or in any way connected with such Bonds, including but not limited to, fees of attorneys and other expenses, costs and fees of investigation, adjustment of claims, procuring or attempting to procure the discharge of such Bonds and attempting to recover losses or expenses from indemnitors or third parties, whether the Surety shall have paid or incurred same, as aforesaid."

22. The Surety, American Southern, has sustained a loss by virtue of having paid claims of the obligee for completion of the Project and having paid consultants and attorneys in the total amount of \$319,458.42. In addition, the Surety has incurred and will continue to incur costs, expenses and attorney's fees in connection with having issued the aforementioned Bonds and in the prosecution of this action.

WHEREFORE, the Plaintiff, American Southern, demands judgment against the Defendants, Creative Scapes and Richard Maranville, jointly, individually, separately and severally in the amount of \$319,458.42, plus interest, costs and attorney's fees incurred in this action.

COUNT FOUR
BREACH OF CONTRACT

23. American Southern reaffirms and incorporates all previous allegations of its Complaint.

24. Pursuant to a letter to all defendants dated July 23, 2018, American Southern demanded that the defendants reimburse American Southern \$319,458.42 pursuant to the terms of the General Agreement of Indemnity.

25. The defendants have breached the terms of the General Agreement of Indemnity by failing and refusing to reimburse American Southern and to otherwise perform their obligations under the terms of that Agreement.

WHEREFORE, the Plaintiff, American Southern, demands judgment against the Defendants, Creative Scapes and Richard Maranville, jointly, individually, separately and severally in the amount of \$319,458.42, plus interest, costs and attorney's fees incurred in this action.

Respectfully submitted,

s/ J. Scott Dickens

J. Scott Dickens (ASB-6823-N74J)
STARNES DAVIS FLORIE LLP
100 Brookwood Place, Seventh Floor
Birmingham, Alabama 35259-8512
E: *sdickens@starneslaw.com*
T: (205) 868-6000
F: (205) 868-6099

/s/ Amber M. Whillock

Amber M. Whillock (ASB-0816-R79W)

E: awhillock@starneslaw.com

STARNES DAVIS FLORIE LLP

100 Brookwood Place, Seventh Floor

Birmingham, Alabama 35209

T: 205.868.6000

F: 205.868.6099

*Attorneys for Plaintiff, American Southern
Insurance Company*

**DEFENDANTS TO BE SERVED VIA U.S. CERTIFIED MAIL AT THE
FOLLOWING ADDRESS(ES):**

Creative Scapes, LLC
185 Raleigh Way
Huntsville, AL 35811

Richard Maranville
185 Raleigh Way
Huntsville, AL 35811